

**Remarks**

Claims 1-4 and 9 are pending. Claim 1 has been amended herein.

***Claim Objections***

Objections have been made as to what agreement is referred to in claim 1 and to the subparagraph formatting of the authentication step. Claim 1 has been amended consistent with the assumption stated in item 5 of the Office Action and the antecedent operator comparison. Subparagraphing has also been introduced in the authentication step. Entry of the amendments is requested after Final as the amendments are consistent with the Examiners suggestions and, also because the objections could clearly have been timely raised before the Final Rejection.

In view of these withdrawal of the claims objections is respectfully requested.

***Claims Rejections - 35 USC §103***

Claims 1-4 and 9 have been rejected as obvious from Farrall (GB 2,304,077) in view of Houvener US 5,657,389 and further in view of Pappu (US 6584214). Reconsideration is requested.

The rejection is traversed for the reasons stated in the applicant's previous response of 17 February 2009. Summarizing:

Farrall and Pappu both describe volume based identifiers which are viewed with automatic readers, with verification requiring calculation of digital information obtained by the reader compared to stored information from a previous reading or image. Neither document suggest that meaningful comparison between the identifier and a stored image can be accomplished visually and the systems do not meet the recitation of identifiers that are clearly perceived in form size and relative position.

In the system of Houvener, the digital photograph of the person or the signature of

the person is displayed on the display means in order for the clerk to compare it with the physical appearance or the signature of the person. Human brains have brain circuitry specially devoted to facial recognition tasks that is not applicable generally to other pattern recognition. Nothing about the identifiers of either Farrall or Pappu would lead one too believe that facial recognition is implicated or suggests that their volume identifiers can be comparably discriminated by an ordinary transaction clerk.

Likewise, visual comparisons of signatures is a task familiar to clerks processing credit transactions. From their inception credit cards have had been signed on their back and clerks have been instructed to compare that signature with one provided at the time of the transaction. Despite this familiarity, it is notorious that signature comparisons are highly inaccurate. A reasonable person considering the real life experience of signature verification would not think to rely on visual comparison of the much more complex images of the identifiers of Farrall and Pappu as the basis for a transaction authorization. This is the realistic conclusion that results from the "step backward" analysis required in MPEP 2142.

There is no teaching in any of these documents to use a visual comparison on a volume based identifier on a card as the basis of an authentication. In the context of a credit card transaction, the combined teachings the three documents do not suggest that a visual comparison can be an adequate technique for discriminating enough information from a volume based identifier to provide a suitable basis for a transaction authorization decision. They clearly teach to the skilled person that an automatic reader will be needed at each location where the card will be presented.

At least for these reasons, using a visual comparison as recited in claim 1 to authenticate the volume identifiers of Farrall or Pappu is not one that is obvious from the everyday tasks taught in Houvenner.

With respect to claim 9 the applicant further submits that bubbles formed mechanically e.g. by injection or stirring, as taught by Pappu (3:50-53) will typically have a

distribution that is at least partly a function of reproducible parameter selections. Self-generated bubble patterns are therefore less similar to each other and are more advantageously employed in the visual authentication step recited in claim 1.

### ***Claim Interpretation***

The Final Office Action asserts that the Examiner is applying the broadest reasonable interpretation "unless terms have been defined explicitly in the specification." Citing MPEP §2111. This statement is not the law, and it is not supported by MPEP §2111. The correct formulation is the "broadest reasonable construction *in light of the specification as it would be interpreted by one of ordinary skill in the art.*" See quotation from *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364, 70 USPQ2d 1827, (Fed. Cir. 2004) that is provided in MPEP §2111 (emphasis added).

The Office has no authority to give a claim term a construction which a skilled person would not apply after reading the specification in context, regardless of what the term might arguably mean in a different context. There is nothing in the law that allows for imposition of a non-contextual construction "unless the terms have been defined explicitly in the specification." The Final Action errs as a matter of law is asserting this to be the case.

With regard to the specific assertion of the definitions of "make" and "visual" the applicant agrees that the definition on paragraph 32 of the Final Action ("of or relating to the sense of sight") is the correct one for construction of claim 1, but does not agree with the statement in paragraph 35 that this definition supports the assertion in paragraph 35 that "anything involving light or visible artifacts is visual." The term "sight" pertains to perception with the eyes, see attached definition from freedictionary.com. Thus the statement "anything involving light or visible artifacts is visual" is a logical *non sequitur* from the correct definition.

No reasonable skilled person would consider the computers of Farrall or Pappu to have a sense of sight. Computer comparison of images, whether operator initiated or not, do not involve a visual comparison because they do not use perception by eyes in making the

comparison. Consequently the assertion in item 35 of the Final Action that the computer comparisons of the prior art are visual is unreasonable on its face.

At least for the reasons given above withdrawal of the obviousness rejection of claims 1-4 and 9 is respectfully requested.

***Conclusion***

The Amendments presented herein address objections raised in Final Action and so are enterable without regard to the Final status. The obviousness rejection has been shown to be founded on an unreasonable assertion relating to the meaning of a visual comparison and incorrect as a matter of fact and law. The application is believed to be in condition for allowance. Early and favourable action thereon is requested

Respectfully submitted,  
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